

3A
3-12-02

CITY COUNCIL OF ALEXANDRIA, VIRGINIA

**Public Hearing Meeting
Saturday, February 23, 2002 - - 9:30 a.m.**

Present: Mayor Kerry J. Donley, Members of City Council Claire M. Eberwein, William D. Euille, Redella S. Pepper, David G. Speck, and Joyce Woodson.

Absent: Vice Mayor William C. Cleveland.

Also Present: Mr. Sunderland, City Manager; Mr. Pessoa, City Attorney; Ms. Evans, Assistant City Manager; Mr. Jinks, Assistant City Manager; Ms. Fogarty, Director of Planning and Zoning; Ms. Ross, Deputy Director of Planning and Zoning; Mr. Baier, Director of Transportation and Environmental Services; Ms. Davis, Director of Housing; Mr. Swearingen, Director of Management and Budget; Ms. Whitmore, Director of Recreation, Parks and Cultural Activities; Urban Planner Farner, Planning and Zoning; Public Information Officer Gordon; Purchasing Agent Pitzer; Arborist Noelle; and Lieutenant Uzzell, Police Department.

Recorded by: Ms. Susan K. Seagroves, Deputy City Clerk and Clerk of Council.

OPENING

The Meeting was called to Order by Mayor Donley, and the Deputy City Clerk called the Roll; all Members of City Council were present except for Vice Mayor Cleveland.

2. Public Discussion Period.

(a) Marianne Kartchner, 805 Bernard Street, speaking for Concerned Citizens for Chetworth Park, requested that Council resolve the issue of Chetworth Park as promptly as possible and give the Parks and Recreation Department the authority to get rid of the dog walk designation and return it to the people of the neighborhood.

Councilman Speck noted that this matter is to be docketed for the March 12 legislative meeting and that some definitive decision will be made.

(b) Carolyn Merck, 324 North Royal Street, on behalf of several neighbors, spoke about the process ARHA is using for the redevelopment of the Samuel Madden Homes and requested that the neighboring homeowners be included in the redevelopment design process.

Mayor Donley, Councilman Speck and City Manager Sunderland responded to some of the issues raised and participated in the discussion.

(c) A. Melvin Miller, 3928 Colonel Ellis Avenue, chair, Alexandria Redevelopment and Housing Authority, gave an update on Samuel Madden Homes. He advised that on the February 8 submission deadline, ARHA received five proposals from development teams, and he will appoint a selection committee next week, to include City staff. He announced that on Saturday, March 2, there will be a community planning and design workshop on the Samuel Madden Homes redevelopment from 9 a.m. to 5 p.m. at the Radisson Hotel Old Town. This workshop will carry over to March 3, if necessary. The follow-up meeting will be held on March 9.

Councilman Euille raised his concern that the bidders are being invited to attend the community meeting when they should be required to attend. Chair Miller addressed his concern.

Mayor Donley asked that to whatever degree possible, the ARHA Board meet specifically with the nearby neighborhood residents as opposed to the broader community.

(A copy of a flyer announcing the Alexandria Redevelopment and Housing Authority ("ARHA") Samuel Madden Homes (Downtown) Hope VI 2002 Planning and Design Workshop is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Public Discussion (c); 2/23/02, and is incorporated herewith as part of this record by reference.)

(d) Cindy DeGrood, 2411 Leslie Avenue, spoke to the larger issues involving the proposed Clermont Cove development: the need for affordable housing and the need to protect the environment as well. She commended staff for the great deal of effort they have put into this effort.

The City Manager will get together with staff and the landowner to discuss exactly what parameters do apply in terms of any future use, and if another plan comes out of that meeting, that plan will work through the process back to Council.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES

ACTION CONSENT CALENDAR (3-7)

Planning Commission

Without objection, City Council removed docket item nos. 6 and 7 from the Action Consent Calendar and considered them under separation motions.

3. SPECIAL USE PERMIT #2001-0129 -- 5715-A EDSALL RD -- NEW SZECHUAN EXPRESS -- Public Hearing and Consideration of a request for a special use permit to change the ownership of a restaurant; zoned CG/Commercial General. Applicant: Chunlin Zhou.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 2/23/02, and is incorporated herewith as part of this record by reference.)

4. SPECIAL USE PERMIT #2001-0134 -- 4750 EISENHOWER AV -- Public Hearing and Consideration of a request for a special use permit for a temporary trailer for office use; zoned OCM/Office Commercial Medium. Applicant: Samson Michael.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4; 2/23/02, and is incorporated herewith as part of this record by reference.)

5. SPECIAL USE PERMIT #2001-0130 -- 2520 N CHAMBLISS ST -- Public Hearing and Consideration of a request for a special use permit to operate a child care home; zoned R-12/Residential. Applicant: Vijaya Shah.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5; 2/23/02, and is incorporated herewith as part of this record by reference.)

END OF ACTION CONSENT CALENDAR

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Speck and carried on a vote of 5-to-0, City Council approved the Action Consent Calendar with the exception of docket item nos. 6 and 7 which were considered under separate motions. The City Council actions were as follows:

3. City Council approved the Planning Commission recommendation.
4. City Council approved the Planning Commission recommendation.
5. City Council approved the Planning Commission recommendation.

END OF ACTION CONSENT CALENDAR

The voting was as follows:

Pepper	"aye"	Cleveland	absent
Speck	"aye"	Eberwein	"aye"
Donley	"aye"	Euille	out of room
	Woodson	"aye"	

6. SPECIAL USE PERMIT #2001-0131 -- 4213 DUKE ST -- ENTERPRISE RENT-A-CAR -- Public Hearing and Consideration of a request for a special use permit to operate an automobile rental business; zoned CG/Commercial General. Applicant: Enterprise Rent-A-Car, by Daniel Milwit.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6; 2/23/02, and is incorporated herewith as part of this record by reference.)

John McGranaman, 1751 Pinnacle Drive, Suite 1700, McLean, attorney for the applicant, was available to respond to questions.

In response to Councilman Speck's inquiry, Attorney McGranaman confirmed that there is no misunderstanding about the signage--there will be no freestanding sign.

Attorney McGranaman responded to Councilwoman Pepper's questions and stated that care will be taken to significantly improve and maintain the site's appearance.

WHEREUPON, upon motion by Councilman Speck, seconded by Councilwoman Pepper and carried unanimously by all those present, City Council approved the Planning Commission recommendation, with the amendment to condition #22 to change the one-year review to a six-month review. The voting was as follows:

Speck	"aye"	Cleveland	absent
Pepper	"aye"	Eberwein	"aye"
Donley	"aye"	Euille	"aye"
		Woodson	"aye"

7. **SPECIAL USE PERMIT #2001-0006 -- 150 S PICKETT ST -- PASSPORT INFINITI AND NISSAN** -- Public Hearing and Consideration of a request for a special use permit for expansion of the existing automobile dealership facility; zoned CG/Commercial General. Applicant: Passport Motorcars, Inc., by Everett A. Hellmuth, III.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7; 2/23/02, and is incorporated herewith as part of this record by reference.)

Everett A. Hellmuth, 9511 Lynnhall Place, owner of Passport Motorcars, was available to answer questions.

Councilwoman Pepper raised her concern about the view of the back of this facility from the Cameron Station development, and she encouraged the applicant to make the effort to take care of the site and keep it attractively landscaped.

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Euille and carried on a vote of 5-to-0, City Council approved the Planning Commission recommendation. The voting was as follows:

Pepper	"aye"	Cleveland	absent
Euille	"aye"	Eberwein	out of room
Donley	"aye"	Speck	"aye"
		Woodson	"aye"

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

8. **Public Hearing and Consideration of the Proposed Alexandria Spring 2002 Gypsy Moth Suppression Program. (#11 2/12/02)**

(A copy of the City Manager's memorandum dated February 4, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8; 2/23/02, and is incorporated herewith as part of this record by reference.)

There were no speakers on this item; therefore, the public hearing was concluded.

Arborist Noelle and Recreation, Parks and Cultural Activities Director Whitmore responded to questions posed by Councilwoman Woodson about the spraying.

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Euille and carried on a vote of 5-to-0, City Council approved the program as recommended by staff, with the following components: (1) Aerial application of Bacillus thuringiensis (B.t.) over one 91-acre spray block including the Virginia Theological Seminary and a small area in Seminary Hill (Attachment 1 to the City Manager's memorandum). This program will be carried out in cooperation with the Virginia Department of Agriculture and Consumer Services (VDACS); (2) Declaration that the aerial and ground spray programs are to be voluntary, that a 200-foot buffer zone will be maintained around the property of any owner who objects to aerial spraying, and that ground spraying will be provided on all properties within a buffer zone unless the owners object, and opt out of having their properties included in the ground spray program; (3) Authorization for the City to enter into an agreement with a private contractor for the ground spray application of B.t.; and (4) Implementation of other gypsy moth suppression measures to include the distribution of burlap for banding trees and educational materials in cooperation with the Virginia Department of Agriculture and Consumer Services. The voting was as follows:

Pepper	"aye"	Cleveland	absent
Euille	"aye"	Eberwein	out of room
Donley	"aye"	Speck	"aye"
	Woodson	"aye"	

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

Without objection, City Council considered docket item nos. 9 and 10 together and under one motion.

9. REZONING #2001-0005 -- 4320 SEMINARY RD -- ALEXANDRIA HOSPITAL -- Public Hearing and Consideration of a request to change the zoning of the subject property from R-12/Residential to R-8/Residential. Applicant: Inova Alexandria Hospital, by J. Howard Middleton, Jr., attorney.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 2/23/02, and is incorporated herewith as part of this record by reference.)

10. DEVELOPMENT SPECIAL USE PERMIT #2001-0020 -- 4320 SEMINARY RD -- ALEXANDRIA HOSPITAL -- Public Hearing and Consideration of a request for a development special use permit, with site plan, to construct an addition to the hospital and for a structured parking facility; zoned R-12/Residential (R-8/Residential pending). Applicant: Inova Alexandria Hospital, by J. Howard Middleton, Jr., attorney.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.

An e-mail message received from Jeremy Flachs, 1521 Oronoco Street, dated February 8, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item Nos. 9 and 10; 2/23/02, and is incorporated herewith as part of this record by reference.

A copy of the INOVA Alexandria Hospital Traffic Impact Analysis dated August 31, 2001, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.

Correspondence received by the Planning Commission is on file in the office of the City Clerk and Clerk of Council, marked collectively as Exhibit No. 4 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.)

Planning and Zoning Director Fogarty made a PowerPoint presentation providing an overview of the hospital's application.

(A copy of the PowerPoint material is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 5 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.)

The following persons participated in the public hearing on this item:

Howard Middleton, 3100 Fairview Park Drive, Falls Church, attorney for the applicant, explained the purpose and the process of the project. He thanked everyone in the City who has worked with them, particularly the Seminary Hill Civic Association.

Manmohan Sahni, 906 North Howard Street, presented a petition from North Howard Street neighbors concerned about the height of the parking garage and requested that Council not approve the applications unless two levels of underground parking are provided instead of only one.

(A copy of Mr. Sahni's statement and petition are on file in the office of the City Clerk and Clerk of Council, marked collectively as Exhibit No. 6 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.)

Huey Battle, 801 North Fairfax Street, #402, chair, Alexandria Chamber of Commerce, spoke in support.

Frank P. Homburger, 1100 North Howard Street, an adjacent homeowner, spoke in support and requested that a committee be established consisting of neighborhood representatives, Planning staff and hospital authorities to meet on a regular basis to address issues of concern as this proposal continues through the planning, design and construction phases.

(A copy of Mr. Homburger's statement is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 7 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.)

John Brownley, 801 North Howard Street, #549, president of the Plaza Condominium Association, spoke in support.

Karl Hebenstreit, 904 North Howard Street, raised his concern about the parking garage height and lighting.

Bill Dickinson, 805 Quaker Lane, president of Seminary Hill Civic Association, spoke in support and concurred with the earlier suggestion for the establishment of a committee consisting of neighborhood representatives, City staff and the hospital.

(A copy of Mr. Dickinson's statement is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 8 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.)

Mayor Donley confirmed that both the Association and the Hospital are agreeable to the establishment of a committee to monitor the construction process.

Don Mulcahy, 5100 Fillmore Avenue, president, residents council of Washington House, spoke in favor of the Alexandria Hospital expansion.

Jack Sullivan, 4300 Ivanhoe Place, spoke in favor of approval.

Timothy J. Catrona, 7320 Ronald Street, Falls Church, representing AIMCO that owns and operates Foxchase of Alexandria, spoke in support of the hospital.

Dick Hobson, 99 North Quaker Lane, attorney for the Seminary Hill Civic Association, noted for the record that City Attorney Pessoa has agreed with the draft Scenic Open Space Easement Agreement which Mr. Middleton and he worked out, and Mr. Hobson submitted for the record the draft Agreement dated 2/21/02, to be entered into by the City and INOVA.

(A copy of the draft Scenic Open Space Easement Agreement dated February 21, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 9 of Item No. 10; 2/23/02, and is incorporated herewith as part of this record by reference.)

Sharon Annear, 1118 North Howard Street, spoke in support of the easement agreement and raised a concern about restriping/reconfiguration/resigning of parking at Seminary Road and Howard Street proposed by T&ES.

Nell Vetter, 922 Juniper Place, spoke in support.

Councilman Euille disclosed that he serves on the Board of Directors of the Inova Alexandria Hospital Foundation and on the corporate board at Inova Health System; however, he will be participating in the discussion and voting on this matter.

Councilwoman Woodson posed questions about the parking garage, and Attorney Middleton responded to her inquiries

WHEREUPON, a motion was made by Councilwoman Pepper and seconded by Councilman Euille to approve the Planning Commission recommendation on docket item no. 9 and to approve the Planning Commission recommendation on docket item no. 10.

Councilman Speck offered a friendly amendment to amend condition #32 on docket item No. 10 to include the standard language that employees who drive to work are required to use off-street parking, and staff is to insert this language where it has to go; which friendly amendment was accepted by the maker and seconder of the motion.

Attorney Middleton agreed to the amendment to condition #32.

City Council returned to the main motion, as amended, which reads as follows:

THEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Euille and carried unanimously by all those present, City Council approved the Planning Commission recommendation on docket item no. 9 and approved the Planning Commission recommendation on docket item no.10, with the amendment to condition #32 to include the standard language that employees who drive to work are required to use off-street parking. Staff is to insert this language where it has to go. The voting was as follows:

Pepper	"aye"	Cleveland	absent
Euille	"aye"	Eberwein	"aye"
Donley	"aye"	Speck	"aye"
	Woodson	"aye"	

* * * * *

Without objection, City Council considered docket item nos. 11 and 12 together but under separate motions.

11. SPECIAL USE PERMIT #2001-0120 -- 221 W GLEBE RD -- Public Hearing and Consideration of a request for a special use permit for a restaurant; zoned CG/Commercial General. Applicant: Pamela Cheng.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11; 2/23/02, and is incorporated herewith as part of this record by reference.)

12. SPECIAL USE PERMIT #2001-0119 -- 221 W GLEBE RD -- Public Hearing and Consideration of a request for a special use permit for a market; zoned CG/Commercial General. Applicant: Pamela Cheng.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 5, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 12; 2/23/02, and is incorporated herewith as part of this record by reference.)

The following persons participated in the public hearing on these items:

Harold A. Brooks, 29 West Reed Avenue, on behalf of Hume Springs Citizens Association, spoke in support of the interim proposal.

Marlin G. Lord, 2724 Hickory Street, spoke in support of the interim use, expressed his concern regarding the delicate coalition which has been built for supporting new development, and the need for the removal of the Datatel building.

Councilman Speck directed questions to Planning and Zoning Deputy Director Ross about the SUPs for this facility, and City Attorney Pessoa explained that the City's control is in the lease termination provision at year five, which applies to both SUP uses as well as to the by-right use.

Maria Wasawski, 306 East Hume Avenue, representing the Mount Jefferson Civic Association, spoke in support.

Mary Beth Flowers, 159 Dale Street, representing Hume Springs Citizens Association, spoke to advocate for access and safety issues that need to be addressed in lieu of the upcoming redevelopment of the Safeway site.

(A copy of Ms. Flower's statement is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item Nos. 11 and 12; 2/23/02, and is incorporated herewith as part of this record by reference.)

Mayor Donley asked staff to follow up on the vehicle traffic and pedestrian safety aspects at the intersections of Mount Vernon Avenue and East Glebe Road, and East Reed Avenue at Mount Vernon Avenue, to look at some alternative solutions, and to coordinate with the civic association.

Mary Catherine Gibbs, 307 North Washington Street, attorney for the landowner, explained that the Planning Commission approved this based upon the concept terms of an agreement which has now been finalized.

Councilman Speck asked Attorney Gibbs to declare, for the record, that there is no misunderstanding on the part of the landowner about the middle parcel being part of the five-year plan, and she assured him that it is one lease.

Planning and Zoning Deputy Director Ross responded to questions from Councilman Speck about beer and wine sales, and Mayor Donley participated in the discussion.

Councilwoman Woodson directed questions to Planning and Zoning Deputy Director Ross regarding the ongoing redevelopment process, and Planning and Zoning Director Fogarty and Mayor Donley participated in the discussion.

11. **WHEREUPON**, upon motion by Councilman Speck, seconded by Councilwoman Pepper and carried unanimously by all those present, City Council approved the Planning Commission recommendation with the change in condition #11 to delete the requirement to provide free off-street parking for employees and replace it with our standard language. The voting was as follows:

Speck	"aye"	Cleveland	absent
Pepper	"aye"	Eberwein	"aye"
Donley	"aye"	Euille	"aye"
	Woodson	"aye"	

12. **THEREUPON**, upon motion by Councilman Speck, seconded by Councilwoman Eberwein and carried unanimously by all those present, City Council approved the Planning Commission recommendation with the change in condition #4 to be a 10:00 p.m. closing, so that it now reads: **"4. The hours of operation shall be limited to 7:30 a.m. to 10:00 p.m., daily."**, and to change condition #13 to delete the requirement for the provision of free off-street parking for employees and replace it with our standard language. The voting was as follows:

Speck	"aye"	Cleveland	absent
Eberwein	"aye"	Euille	"aye"
Donley	"aye"	Pepper	"aye"
	Woodson	"aye"	

ORDINANCES AND RESOLUTIONS

13. Public Hearing, Second Reading and Final Passage of an Ordinance to change the membership of the Community Criminal Justice Board established by Section 2-4-10 of the City Code. (#17 2/12/02) **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated February 6, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 13; 2/23/02, and is incorporated herewith as part of this record by reference.)

The Deputy City Clerk read the docket item.

It was noted that there were no speakers on this item; therefore, the public hearing was concluded.

WHEREUPON, upon motion by Councilman Speck, seconded by Councilwoman Pepper and carried on a ROLL-CALL vote of 6-to-0, City Council finally passed the ordinance upon its Second Reading and Final Passage. The voting was as follows:

Speck	"aye"	Cleveland	absent
Pepper	"aye"	Eberwein	"aye"
Donley	"aye"	Euille	"aye"
	Woodson	"aye"	

The ordinance finally passed reads as follows:

ORDINANCE NO. 4237

AN ORDINANCE to amend and reordain Section 2-4-100 (CREATION, COMPOSITION AND ORGANIZATION) of Article L (ALEXANDRIA COMMUNITY CRIMINAL JUSTICE BOARD), Chapter 4 (COMMITTEES, BOARDS AND COMMISSIONS), Title 2 (GENERAL GOVERNMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 2-4-100 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 2-4-100 Creation, composition and organization.

(a) There is hereby established a board to be known as the Alexandria Community Criminal Justice Board.

(b) The board shall consist of 15 members to be appointed by the city council. The composition of the board shall be as follows:

- (1) one judge of the Alexandria general district court;
- (2) one judge of the Alexandria circuit court;
- (3) one judge of the Alexandria juvenile and domestic relations court;
- (4) the chief magistrate for the city;
- (5) the chief of police;
- (6) the sheriff;
- (7) the commonwealth's attorney;
- (8) the administrator of the city's community services board;
- (9) a local educator;
- (10) the chief public defender;
- (11) a person appointed by city council to serve as its representative;
- (12) the director of the city's office of adult probation and parole;
- (13) two citizens; and
- (14) the director of the city's court services unit.

(c) Members of the board shall be appointed in the manner prescribed by article A of this chapter; provided, that:

(1) the member who is a local educator shall be nominated by the superintendent of schools and confirmed by city council; and

(2) all members of the board, except for the citizen members, shall be exempt from the application requirement set forth in section 2-4-7(c) of this code.

(d) The citizen members and the member who is a local educator shall serve for a term of two years, except in the case of an appointment to fill the unexpired portion of a term.

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Introduction: February 12, 2002
First Reading: February 12, 2002
Publication: February 14, 2002
Public Hearing: February 23, 2002
Second Reading: February 23, 2002
Final Passage: February 23, 2002

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14. Public Hearing, Second Reading and Final Passage of an Ordinance to make supplemental appropriations for the support of the government of the City of Alexandria for FY 2002. (#18 2/12/02) **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated February 4, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 14; 2/23/02, and is incorporated herewith as part of this record by reference.)

The Deputy City Clerk read the docket item.

It was noted that there were no speakers on this item; therefore, the public hearing was concluded.

WHEREUPON, upon motion by Councilman Euille, seconded by Councilwoman Pepper and carried on a ROLL-CALL vote of 6-to-0, City Council finally passed the ordinance upon its Second Reading and Final Passage. The voting was as follows:

Euille	"aye"	Cleveland	absent
Pepper	"aye"	Eberwein	"aye"
Donley	"aye"	Speck	"aye"
	Woodson	"aye"	

The ordinance finally passed reads as follows:

ORDINANCE NO. 4238

AN ORDINANCE making provision for the support of the government of the City of Alexandria, Virginia, and for the payment of municipal expenditures by providing supplemental appropriations of amounts required to defray certain expenditures and liabilities of the City for fiscal year 2002, which began on the first day of July 2001 and ends on the thirtieth day of June 2002.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the Council of the City of Alexandria, Virginia, does hereby make provision for and appropriate to the funds hereafter named the amount hereafter stated that is required to defray certain expenditures and liabilities of the City for fiscal year 2002, the source of such amount being external grant awards for which revenues were authorized and adjusted after July 1, 2001, but not appropriated, and further that the Council does hereby allot the amount so appropriated to the several City departments for fiscal year 2002, as follows:

SPECIAL REVENUE FUND

ESTIMATED REVENUE:

Office on Women	4,379
Commonwealth Attorney	63,762
Sheriff	20,982
Court Services	175,335
Fire	236,369
Police	200,617
Housing	173,553
MH/MR/SA	264,919
Human Services	12,951
Recreation	<u>614</u>
Total Estimated Revenue	<u>\$ 1,153,481</u>

APPROPRIATION:

Office on Women	4,379
Commonwealth Attorney	63,762
Sheriff	20,982
Court Services	175,335
Fire	236,369
Police	200,617
Housing	173,553
MH/MR/SA	264,919
Human Services	12,951
Recreation	<u>614</u>
Total Appropriation	<u>\$ 1,153,481</u>

Section 2. That the Council of the City of Alexandria, Virginia, does hereby make provision for and appropriate to the fund hereafter named the amount hereafter stated that is required to defray certain expenditures and liabilities of the City in fiscal year 2002, the source of such amounts being intergovernmental revenue, and further, that the Council does hereby allot the amount so appropriated for fiscal year 2002, as follows:

COMPONENT UNIT

ESTIMATED REVENUE:

Intergovernmental Revenue	\$ 1,601
Total Estimated Revenue	\$ 1,601

APPROPRIATION:

Component Unit Library	\$ 1,601
Total Appropriation	\$ 1,601

Section 3. That the Council of the City of Alexandria, Virginia, does hereby make provision for and appropriate to the fund hereafter named the amount hereafter stated that is required to defray certain expenditures of the City for fiscal year 2002, the source of such amount being intergovernmental revenue and donations.

CAPITAL PROJECTS FUND

ESTIMATED REVENUE:

Intergovernmental Revenue	\$ 830,000
Donations	363,835
Total Estimated Revenue	\$ 1,193,835

APPROPRIATION:

Capital Projects	\$ 1,193,835
Total Appropriation	\$ 1,193,835

Section 4. That this ordinance shall become effective upon the date and time at the time of its final passage.

KERRY J. DONLEY
Mayor

Introduction:	February 12, 2002
First Reading:	February 12, 2002
Publication:	February 14, 2002
Public Hearing:	February 23, 2002
Second Reading:	February 23, 2002
Final Passage:	February 23, 2002

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15. Public Hearing, Second Reading and Final Passage of an Ordinance to authorize the City to participate in and purchase electricity through the Virginia Energy Purchasing Governmental Association. (#19 2/12/02) **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated February 4, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 15; 2/23/02, and is incorporated herewith as part of this record by reference.)

The Deputy City Clerk read the docket item.

It was noted that there were no speakers on this item; therefore, the public hearing was concluded.

WHEREUPON, upon motion by Councilman Euille, seconded by Councilwoman Pepper and carried on a ROLL-CALL vote of 6-to-0, City Council finally passed the ordinance upon its Second Reading and Final Passage. The voting was as follows:

Euille	"aye"	Cleveland	absent
Pepper	"aye"	Eberwein	"aye"
Donley	"aye"	Speck	"aye"
	Woodson	"aye"	

The ordinance finally passed reads as follows:

ORDINANCE NO. 4239

AN ORDINANCE authorizing the City of Alexandria to become a member of and participate in the Virginia Energy Purchasing Governmental Association.

WHEREAS, the VML/VACo Virginia Power Steering Committee (the "Committee"), composed of representatives of the City of Alexandria, a municipal corporation of the Commonwealth of Virginia, and other local governments and political subdivisions of the Commonwealth, has for several decades negotiated on behalf of such governmental units a standard form contract for their purchase of electricity supply and delivery service from Virginia Electric and Power Company ("Virginia Power") as a sole source provider; and

WHEREAS, political subdivisions of the Commonwealth of Virginia are authorized under Virginia law to exercise jointly powers that they otherwise are authorized to exercise independently, and the terms and conditions of such authorization are currently set forth in Sections 15.2-1300 et seq., of the Code of Virginia (1950), as amended (the "Joint Powers Act"); and

WHEREAS, the Virginia Electric Utility Restructuring Act (the "Restructuring Act") further authorizes municipalities and other political subdivisions in the Commonwealth to aggregate their electricity supply requirements for the purpose of their joint purchase of such requirements from licensed suppliers, and the Restructuring Act provides that such aggregation shall not require licensure; and

WHEREAS, the Virginia Public Procurement Act (the "Procurement Act") exempts from its competitive sealed bidding and competitive negotiation requirements (the "Requirements") the joint procurement by public bodies, utilizing competitive principles, of electric utility services purchased through member associations under the conditions set forth in the Procurement Act; and

WHEREAS, the Committee recommends that the aggregation and procurement of electric supply, electric delivery, and other energy-related services ("Energy Services") be effectuated as provided in the Joint Powers Association Agreement, a copy of which is attached to and made part of this Ordinance (the "Joint Powers Agreement"), in accordance with applicable provisions of the Procurement Act, such as the utilization of competitive principles pursuant to the exemption under the Procurement Act from the Requirements; and

WHEREAS, the Committee also recommends that the other services provided by the Committee to its members be effectuated as provided in the Joint Powers Agreement, with such services consisting of (i) assistance in implementing standard form contracts for the purchase of services from incumbent electricity utilities, (ii) education of members regarding electricity procurement issues, (iii) monitoring of legal and regulatory developments affecting the provision of electricity service to local governments, and (iv) hiring of consultants and legal counsel to assist in the provision of the foregoing services ("Steering Committee Services").

WHEREAS, it appearing to the City Council of Alexandria, Virginia, that the joint procurement of the Energy Services pursuant to the Joint Powers Agreement and the provision of Steering Committee Services pursuant to the Joint Powers Agreement is otherwise in the best interests of the City of Alexandria; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That competitive sealed bidding and competitive negotiation for the procurement of Energy Services are not fiscally advantageous to the public because the procurement process for Energy Services must be flexible enough to respond to quickly changing market conditions in which energy prices can fluctuate considerably on a daily or even hourly basis.

Section 2. That the aggregation and joint procurement of Energy Services pursuant to the Joint Powers Agreement is hereby approved.

Section 3. That the provision of Steering Committee Services pursuant to the Joint Powers Agreement is hereby approved.

Section 4. That the Joint Powers Agreement and the performance of the terms and conditions thereof on behalf of the City of Alexandria are hereby authorized and approved.

Section 5. That the City Manager is hereby authorized and directed to execute and deliver the Joint Powers Agreement on behalf of the City of Alexandria in substantially the form attached to this Ordinance.

Section 6. That the payment of obligations the City pursuant to the provisions hereof and the Joint Powers Agreement shall be subject to annual appropriation of requisite funds therefor by the City.

Section 7. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Introduction: February 12, 2002
First Reading: February 12, 2002
Publication: February 14, 2002
Public Hearing: February 23, 2002
Second Reading: February 23, 2002
Final Passage: February 23, 2002

Attachment: Joint Powers Agreement

* * * * *

**VIRGINIA ENERGY PURCHASING GOVERNMENTAL ASSOCIATION
JOINT POWERS ASSOCIATION AGREEMENT**

Dated as of March 1, 2002

THIS AGREEMENT ("Agreement"), is made and entered into by and among the local governments and other political subdivisions of the Commonwealth of Virginia which are signatories hereto (each a "Member" and, collectively, the "Members"), effective as of March 1, 2002, for certain signatories or such later effective date for other signatories as set forth on such signatories' execution page.

WITNESSETH:

WHEREAS, each Member is authorized by law to acquire electricity supply, electricity delivery, and other energy-related services ("Energy Services") as necessary or appropriate for the operation of its respective public facilities; and

WHEREAS, political subdivisions of the Commonwealth of Virginia are authorized under the Code of Virginia 1950, as amended (the "Code") to exercise jointly powers that they otherwise are authorized to exercise independently, and such authorization is currently set forth in sections 15.2-1300, et seq. of the Code, which provide that any power, privilege or authority exercised or capable of being exercised by a political subdivision of the Commonwealth of Virginia may be exercised and enjoyed jointly with any other political subdivision of the Commonwealth having a similar power, privilege or authority except where express statutory procedure is otherwise provided for the joint enterprise; and

WHEREAS, Code sections 15.2-1300, et seq. authorize two or more political subdivisions to enter into agreements with one another for such joint action and to appropriate funds and sell, lease, give or otherwise supply such property, personnel or services therefor as may be within their legal power to furnish; and

WHEREAS, the Members, pursuant to the authority granted in Code sections 15.2-1300, et seq. or such similar authority as may from time to time be authorized under the Code, desire to create a joint powers association and associate as members hereunder with the assistance of the Consultant and Counsel (identified below) for the purposes, among other things, of promoting the interest and welfare of the Members, and developing a closer relation among them, all as hereinafter more particularly set forth; and

WHEREAS, the Virginia Public Procurement Act (the "Procurement Act") exempts from its competitive sealed bidding and competitive negotiation requirements (the "Requirements") the joint procurement by public bodies, utilizing competitive principles, of electric utility services purchased through member associations under the conditions set forth in the Procurement Act;

WHEREAS, the Virginia Power Steering Committee of the Virginia Municipal League and the Virginia Association of Counties (the "Committee"), which is composed of representatives of local governments and other political subdivisions of the Commonwealth purchasing energy from Virginia Electric and Power Company, d/b/a Dominion Virginia Power ("Virginia Power"), has (i) for several decades assisted such governmental bodies in connection with the negotiation of standard form contracts with Virginia Power for the purchase of electric utility services, including electric supply, distribution and transmission, and ancillary services,

(ii) provided assistance in implementing such contracts, (iii) helped educate its members regarding electricity procurement issues, (iv) monitored legal and regulatory developments affecting the provision of electricity service to local governments, and (v) has hired consultants and legal counsel to assist in its provisions of the foregoing services (“Steering Committee Services”).

WHEREAS, the Committee recommends that the aggregation and procurement of Energy Services be effectuated in compliance with applicable provisions of the Procurement Act, such as the utilization of competitive principles pursuant to an exemption from the Requirements, and the Committee also recommends that the Steering Committee Services be undertaken by the same entity that arranges for the procurement of the Energy Services.

NOW, THEREFORE, in consideration of the premises and the undertakings hereinafter stated, the Members agree as follows:

1. **Name.** The undertaking of the Members hereunder shall be named and designated as the Virginia Energy Purchasing Governmental Association (hereinafter “VEPGA”).

2. **Term of the Agreement.** This Agreement shall be effective for the period commencing on the date set forth above (with each Member to adopt the Agreement on or after such commencement date) and shall terminate upon the earlier of (a) a unanimous vote of all the remaining Members or (b) when the membership has decreased to one Member. Upon such termination, any property owned by VEPGA (or the proceeds from the sale of such property) shall be distributed to each remaining Member in accordance with VEPGA’s bylaws, as such bylaws may be amended from time to time by the board governing VEPGA (the “Bylaws”).

3. **Purpose of the Agreement.** The Members enter into this Agreement for the purpose of acting jointly to promote their interests and welfare and to promote the interest and welfare of, and develop close relationships with, similar public bodies. This promotion and development shall consist of the purchase of one or more components of the Energy Services on an aggregated basis and also the provision of Steering Committee Services. VEPGA shall be the Members' agent regarding the purchase of Energy Services, which shall be done in the manner specified in the Bylaws. Each Member agrees, subject, however, to annual appropriation, (a) to purchase its respective share of the Energy Services for any of its accounts that have been selected by one or more supplier(s) chosen by VEPGA to service such accounts and to pay the rate for such accounts negotiated in the procurement process for the one or more components of the Energy Services, and (b) to pay its pro rata share of the budget or the membership fees as hereinafter set forth.

4. **Governance.**

(a) **The Board.** VEPGA shall be governed by a Board (the "Board") that shall initially consist of the individuals listed on Schedule A of this Agreement and thereafter members of the Board shall be elected by the Members in accordance with the Bylaws. The size of the Board may be increased or decreased in accordance with the Bylaws. The Board shall have power to decide all matters relating to VEPGA's activities and operations.

(b) **Meetings of the Board.** The Board shall meet at such times and places as shall be designated in the Bylaws.

(c) **Officers of the Board.** Paul Proto is hereby designated as the initial Chair of the Board, Steve Sinclair is hereby designated as its initial Vice-Chair and Steve Craig is

hereby designated as its initial Secretary/Treasurer. These officers and any other officers elected in accordance with the Bylaws shall serve until the earlier of the submission of such officer's resignation or such officer's removal and the election of a successor by the Board. The Chair shall preside at all meetings of the Board, except that in the absence of the Chair, the Vice-Chair or another Member of the Board shall preside. Vacancies in such offices may be filled by the Board at any meeting.

(d) Quorum for the Board. A majority of board members shall constitute a quorum for any Board meeting. The size of a quorum may be increased or decreased in accordance with the Bylaws.

(e) Actions by the Board. All matters for action by the Board may be adopted upon the affirmative vote of Board members voting at a meeting where a quorum is present, or otherwise as may be specified in this Agreement or in the Bylaws.

(f) Quorum for Members. The lesser of (i) a simple majority of the Members or (ii) eight Members shall constitute a quorum for any meeting of the Members. The size of a quorum may be increased or decreased in accordance with the Bylaws.

(g) Bylaws. The initial Bylaws are set forth in Schedule B to this Agreement. The Bylaws may be amended upon the affirmative vote of two-thirds of all the Board members or upon the affirmative vote of two-thirds of all the Members.

5. **Budget of the Association.**

(a) The Board shall establish a budget for VEPGA with funding by the Members based upon a pro rata share of the budget or, if applicable and approved by the Board, a minimum membership fee. Such pro rata shares and minimum fees shall be assessed on an annual basis except that, under extraordinary and unanticipated circumstances, the Board may assess a pro rata share and minimum fee more than once a year. The pro rata share will be based upon each Member's energy consumption or upon such other equitable method of funding as may be determined from time to time by the Board.

(b) VEPGA shall not create or incur any liability for the Members, jointly or severally, other than and subject to annual appropriation, (i) the costs incurred by any Member in paying its portion of the Energy Services in accordance with contracts signed by the Chair or Vice-Chair on behalf of VEPGA as the Member's agent or (ii) the pro rata share of the budget or the membership fees imposed for a Member's participation in VEPGA. No Member shall be liable or responsible for any payments owed under any contracts for any portion of the Energy Services purchased by any other Member.

6. **Withdrawal of Members.** A Member may withdraw from VEPGA effective July 1 of any calendar year if written notice has been given to VEPGA by March 1 of that calendar year; provided, however, that any accounts of a withdrawing Member that are participating in any contract awarded by VEPGA shall continue to participate in such contract until such contract has expired or has been terminated in accordance with the terms of such contract. Any other methods of withdrawing from VEPGA shall be set forth in the Bylaws.

7. **Execution of Multiple Originals.** This Agreement may be executed by the Members in multiple original counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

WITNESS the following signatures, effective as of the date set forth underneath each signature.

**MEMBER: CITY OF ALEXANDRIA, A
MUNICIPAL CORPORATION OF
VIRGINIA**

Signed:

By: Philip Sunderland

Title: City Manager_____

Effective Date:_____

SCHEDULE A
LIST OF INITIAL BOARD MEMBERS

3 Year Term (2002-2005)

Len Ringler, Paul Proto, Jerry Spivey, Ricky Bowers, Steve Sinclair

2 Year Term (2002-2004)

Matt Groff, Penny Newquist, Dave Gilman, Rick Raike, Bob Jennings

1 Year Term (2002-2003)

Roger Neve, Tom Colbert, Phil Norris, Mac Corwine, Jack Pitzer

SCHEDULE B
INITIAL BYLAWS

See attached.

Bylaws
of
Virginia Energy Purchasing Governmental Association

March 1, 2002

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1. Purpose

The members (the "Members") of Virginia Energy Purchasing Governmental Association ("VEPGA") are local governments and other political subdivisions of the Commonwealth of Virginia that have formed a joint powers association pursuant to the VEPGA Joint Powers Association Agreement dated February 1, 2002 (the "JPA Agreement"). The Members have formed VEPGA to further their economic interests in the aggregation and procurement of electricity supply, electricity delivery, and other energy-related services.

The purchase of competitive electricity supply services, including generation, transmission, ancillary, and billing services related to such competitive electricity supply services, ("Electricity Supply Services") on an aggregated basis shall be a core function of VEPGA ("Core Function").

Another Core Function shall be the provision of services previously provided by the Virginia Power Steering Committee of the Virginia Municipal League and the Virginia Association of Counties (the "Steering Committee"). These services shall be referred to herein as the "Steering Committee Services." For those Members whose local electricity distribution company is not Virginia Power, the Steering Committee Services may be structured to accommodate the services to be provided by VEPGA regarding such Member's local electricity distribution company.

The purchase of other energy-related services shall be non-core functions of VEPGA ("Non-Core Functions"), to the extent Non-Core Functions are permitted by law. All Members must participate in Core Functions on the terms and conditions specified in these Bylaws. Any Member may participate in a Non-Core Function on an opt-in basis.

2. Core Functions

The board of VEPGA (the "Board") shall have the authority to act as each Member's agent for Core Functions relating to all accounts for which a Member is responsible for procuring energy services ("Accounts"). The Board shall also have authority to undertake the following as each Member's agent for Core Functions:

- (a) evaluation of offers for Electricity Supply Services for some or all of the Accounts (with such assistance from consultants and attorneys as the Board deems appropriate),
- (b) award of one or more contracts for Electricity Supply Services for some or all of the Accounts,

- (c) administration of contracts for Electricity Supply Services for some or all of the Accounts, and
- (d) provision of Steering Committee Services.

VEPGA's procurements shall be in compliance with applicable provisions of the Virginia Public Procurement Act, including any exemptions thereto. During the period in which the Accounts are subject to capped rates or default service under Virginia law, VEPGA shall award contracts to a competitive supplier only when (a) the cost of supply offered by such a supplier is projected to be lower than the projected cost that would otherwise pertain when applying the incumbent utility's or default service provider's supply rate under which an Account would otherwise be served, or (b) the contract would otherwise be projected to lower the Account's costs as compared to alternatives over the reasonably relevant time frame.

Each contract awarded by VEPGA for one or more Accounts of a Member shall constitute a contract between a Member and the supplier of services under that contract, and VEPGA shall not be deemed to be party to such contract. The Chair or the Vice-Chair of VEPGA shall execute each contract on behalf of the Member, and the Member, subject to annual appropriations, shall purchase the services for its Account in accordance with the contract. A copy of each such contract shall be provided by VEPGA to each Member as applicable.

3. Non-Core Functions

The Board shall have the authority to appoint one or more subcommittees to recommend what Non-Core Functions VEPGA will undertake and to determine how Members may elect to participate in such functions and how participating Members will fund such functions. Participation in as well as payment for any Non-Core Function will be done only on an opt-in basis. Such Non-Core Functions may include, but are not limited to, metering services, billing services (except for generation billing services), economic load curtailment services, and efficiency and managing services.

4. Membership Fees

Each Member shall, subject to annual appropriations, submit to VEPGA payment for its pro rata share of VEPGA's budget for the Core Functions applicable to each Member. Such pro rata share shall be based upon each Member's energy consumption or upon such other equitable method of funding as may be determined from time to time by the Board.

Each Member that participates in Non-Core Functions shall, subject to annual appropriations, submit to VEPGA payment for its fees for such Non-Core Functions, as such fees are determined and billed by the Board.

VEPGA shall normally assess Members for Core Function fees by May 31st of each year, and such fees shall be due and payable by August 1st of each year. VEPGA may assess Members for Core Functions more than once a year only under extraordinary and unanticipated circumstances.

5. Budget and Fiscal Year

The Board shall adopt by May 31st of each year an annual budget for the upcoming fiscal year, including anticipated receipts and expenditures in such detail as the Board may deem appropriate. The fiscal year of VEPGA shall be from the first day of July in each year until the thirtieth day of the following June, both inclusive.

6. Members

(a) Approval of New Members

The Board shall receive applications for membership from prospective new Members of VEPGA and shall consider such applications for membership in accordance with procedures established by the Board for admission of new Members to VEPGA.

(b) Termination of Membership

After 30 days written notice to the Member, the Board may terminate the membership of any Member who fails to pay its membership fees, comply with these Bylaws, the JPA Agreement, or other rules and regulations for Members, as established from time to time by the Board.

(c) Withdrawal of Members

In accordance with the JPA Agreement, a Member may withdraw from VEPGA (a) effective upon July 1 of any calendar year if written notice has been given to VEPGA by March 1 of that calendar year, or (b) effective upon notice by a Member to VEPGA that the Member is withdrawing on or after the effective date of a Bylaw amendment; provided, however, that any Accounts of a withdrawing Member that are participating in any contract awarded by VEPGA shall continue to participate in such contract until such contract has expired or has been terminated in accordance with the terms of such contract.

(d) Meetings of Members

The Members shall meet annually, on such date and at such time and place as shall be designated by the Board. Special meetings of Members may be held at such time and place as shall be designated in the notice thereof upon call of the Board, the Chair of the Board, or not less than 10% of Members.

(e) Notice of Meetings

Notice of the annual meeting and any special meeting of Members shall be posted in the office of the Chair of the Board and shall be given at least 5 days in advance by any means reasonably calculated to convey such notice to the designated representative ("Designated Representative") of each Member identified on the Member list maintained by the VEPGA Secretary/Treasurer (the "Member List"), including distribution of such notice via first class mail, facsimile, e-mail, or as otherwise may be required by law. For each Member, the Member List shall set forth name and contact information for the principal Designated Representative of each Member and may also contain such information for individuals that may serve as the alternate Designated Representatives in the absence of the principal Designated Representative. Whenever a Member designates an alternate Designated Representative to represent the Member at a meeting and such alternate is not set forth in the Member List, the Member shall be responsible for ensuring that the Chair or the Secretary/Treasurer (or their designees) are informed of this designation.

(f) Voting by Members

Each Member shall have one vote which shall be cast by such Member's Designated Representative. Such Designated Representatives shall register with the Secretary/Treasurer or the Secretary/Treasurer's designee prior to any Members' meeting.

(g) Conduct of Meeting

The Chair of the Board shall preside over all meetings of the Members, except that in his absence, the Vice-Chair or another member of the Board shall preside. The Secretary/Treasurer of the Board or the Secretary/Treasurer's designee shall act as secretary for all meetings of the Members.

At each annual meeting, the Chair or his designee shall report on the financial position of VEPGA. The Members shall also elect Board members as provided in Section 7(b) of these Bylaws.

(h) Quorum

Attendance by the lesser of (i) a simple majority of the Members or (ii) eight Designated Representatives shall constitute a quorum and when a quorum is present at any meeting, a majority of the Designated Representatives present may decide any question brought before such meeting except as otherwise provided by law or these Bylaws; provided, however, in the event a quorum shall not be present at an annual meeting of the Members, vacancies on the Board may be filled by vote of those Designated Representatives present.

7. Board

(a) Powers

The VEPGA shall be managed by a Board which may exercise all the powers of VEPGA except as otherwise provided by law or by these Bylaws. The Board may retain the services of such consultants, legal counsel, administrators, and others as the Board deems necessary or advisable in exercising such powers.

(b) Composition and Election of Board Members

The initial Board shall composed of those individuals listed in Schedule A to the JPA Agreement, who shall serve initial terms of approximately one, two, or three years as indicated on such schedule. Thereafter the Board shall be elected in accordance with these Bylaws at annual meetings of the Members during which approximately one-third of the Board shall be elected each year to serve for a term of three years, or until such Board member's successor is elected and qualified. For example, if the initial Board consists of fifteen members, then (unless the Members adopt a resolution revising the size of the Board) at the annual meeting following the expiration of the initial one-year term for five Board members, the Members shall elect five Board members to serve three year terms.

The Members may, pursuant to a resolution adopted at their annual meeting or at a special meeting, decrease the size of the Board to as little as two Board members or increase the size of the Board to as many as fifteen Board members. If the resolution decreases the size of the Board in a manner that would require the term of currently serving Board members to be shortened, then the resolution shall identify those Board members whose terms are shortened. If the resolution revises the size of the Board to a number that is not divisible by three, then the resolution shall identify how the election of approximately one-third of the Board on an annual basis will proceed.

In the event the Members fail to elect Board members pursuant to this Section 7(b) or to fill vacancies as specified in Section 6(h) of these Bylaws, Board members

currently serving whose terms have not at such time expired shall as soon as practical fill all vacancies on the Board for the ensuing year.

Not less than 30 days prior to each annual meeting, the Board shall solicit the names of candidates from the Members for Board members to be elected at the annual meeting of the Members. Such candidates shall be considered by the Board in making its nominations for new Board members. Nominations may also be made by Members from the floor of the annual meeting of the Members.

(c) Resignation or Termination of a Board Member

A Board member may resign from all duties and responsibilities as a Member of the Board at any time by written notice delivered to the Chair or Secretary/Treasurer of the Board. Such notice shall state the date said resignation shall take effect and such resignation shall automatically take effect on such date unless a successor Board member shall have been selected at an earlier date in which event such resignation shall take effect immediately upon the selection of the successor Board member.

The term of a Board member selected by the Members pursuant to Section 7(b) of these Bylaws or appointed by the Board pursuant to Section 7(d) of these Bylaws shall be terminated by the Board if such Board member no longer represents a local government or other political subdivision which is a Member of VEPGA, or may be terminated by the Board if such Board member misses one half of the meetings held during VEPGA's fiscal year.

Board members, upon resignation or termination for any reason, shall forthwith turn over and deliver to the Chair of the Board or his designee any and all records, books, documents or other property in the possession or under the control of such Board member which belongs to VEPGA.

(d) Vacancies

Any vacancy occurring on the Board other than a vacancy caused by an expired term (except as otherwise may be expressly provided herein) may be filled by the affirmative vote of a majority of the remaining Board members present and voting at a meeting at which a quorum is present. In cases where vacancies are filled by the remaining Board members, the Board may, but need not, solicit nominations from the Members.

(e) Meetings

Regular meetings of the Board shall be held at least once a year at such location as is acceptable to a majority of the Board. The Board may provide, by resolution, the time and place for holding the regular meetings.

Special meetings of the Board shall be held on the call of the Chair, Vice-Chair, or any two other Board members. The Chair of the Board or his designee shall set the date, time and location of each meeting so that the meeting will take place within 60 days of receipt of such call.

The Secretary/Treasurer of the Board or the Secretary/Treasurer's designee shall act as secretary for all meetings of the Board.

(f) Quorum

At any meeting of the Board, a majority of the Board members then in office shall constitute a quorum.

(g) Action at Meeting

At any Board meeting at which a quorum is present, the vote of a majority of the Board members present shall be sufficient to decide any matter, unless a different vote is specified by law or by these Bylaws.

(h) Committees

The Board may create one or more committees and fix the number of Board members to serve on them. Each committee may have one or more members, who serve at the pleasure of the Board. Committees may have such powers and duties as may be designated by the Board, except that they may not fill vacancies on the Board or any of its committees; may not adopt, amend or repeal these Bylaws; and may not authorize or approve distribution of any of the funds of VEPGA, except according to formula or method previously prescribed by the Board.

(i) Liability of Members

In accordance with the JPA Agreement, the Board shall not create or incur any liability for the Members, jointly or severally, other than in the following instances, which shall be subject to annual appropriation: (i) the costs incurred by any Member for payments under contracts signed by the Chair or Vice-Chair on behalf of VEPGA as the Member's agent or (ii) the pro rata share of the budget or the membership fees or, if applicable, the fees for non-Core functions, imposed for a Member's participation in

VEPGA. No Member shall be liable or responsible for any payments owed under any contracts by any other Member.

(j) Liability of Board members and Officers

VEPGA may provide officers and directors insurance for its Board members and officers, and will also indemnify such officers and Board members for any deductibles associated with such insurance coverage.

8. Officers

(a) Number, Election, and Term

As soon as practical after the annual meeting of Members and the election of Board members, the Board members shall elect a Chair, Vice-Chair, and Secretary/Treasurer.

Each officer shall hold office for one year and until such officer's successor is duly elected and qualified, or until such officer's death, resignation, or removal. Each officer shall perform the duties set forth in these bylaws and shall comply with such other conditions as from time to time may be required by the Board.

(b) Removal

Any officer elected by the Board may be removed, with or without cause, by the Board.

(c) Vacancies

A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board for the unexpired portion of the term.

(d) Chair

The Chair shall direct the operations of VEPGA and shall perform all other duties incident to such office.

(e) Vice-Chair

The Vice-Chair shall have the powers and duties incident to that office and shall have such other powers and duties as may be prescribed from time to time by the Board.

(f) Secretary/Treasurer

The Secretary/Treasurer shall be responsible for insuring the recordation of the minutes and for preparing and maintaining custody of the minutes of all meetings of the Members, the Board, and when required, of all standing committees. The Secretary/Treasurer shall also serve and give all notices of VEPGA and shall be responsible for responding to Freedom of Information Act requests. The Secretary/Treasurer shall be the custodian of the records and such other books, records, and papers as the Board may direct; authenticate the records of VEPGA; and perform such other duties as may be incident to such office or as prescribed by the Board.

The Secretary/Treasurer shall see that regular and full accounts are maintained and that proper financial reports are made to the Board. The Secretary/Treasurer shall have such other powers and perform such other duties as are assigned to the Secretary/Treasurer by these Bylaws or as may be assigned to the Secretary/Treasurer by the Board or the Chair. The Board may require that the Secretary/Treasurer give bond to VEPGA, with sufficient sureties, conditioned on the faithful performance of the duties of the Secretary/Treasurer.

9. Contracts, Loans, Checks, and Deposits

(a) Contracts

Either the Chair or the Vice Chair may execute contracts on behalf of and in the name of VEPGA. The Board may authorize any other officer or officers, agent or agents to enter into any contract or execute any instrument in the name of and on behalf of VEPGA, and such authority may be general or confined to specific instances.

(b) Loans

No loans shall be contracted on behalf of VEPGA and no evidence of indebtedness shall be issued in its name unless authorized by the Board.

(c) Checks, Drafts, etc.

All checks, drafts, bills of exchange and other negotiable instruments (except promissory notes) of VEPGA connected therewith shall be signed by the Chair, Vice-Chair, the Secretary/Treasurer, or by such other officer or agent of VEPGA as may be authorized so to do by the Board.

(d) Deposits and Investments

All funds of VEPGA not otherwise employed shall be deposited from time to time in such banks or other depositories as the Board may select or invested as allowed under state law.

10. Termination of Association

In accordance with the JPA Agreement, VEPGA may be terminated at any time upon the concurrence of all Members at the time of such termination.

In the event of termination of VEPGA, the remaining funds available to VEPGA, after providing for all outstanding obligations, shall be distributed to Members at the time of such termination through a formula determined by the Board.

11. Notices

Unless otherwise provided for in these Bylaws, any notices, approvals, requests, consents and other communications required by these Bylaws shall be deemed to have been given when delivered in person, by fax, by E-mail or by first class mail, addressed to the principal Designated Representative of a Member on the Member List maintained by the Secretary/Treasurer. In addition, the Board may utilize a website or similar method to inform Members of VEPGA meetings, Board nominations, requests for proposals, contract awards, and other matters of interest to Members.

12. Amendments

These Bylaws may be amended at any time by the concurrence of two-thirds of the Board or two-thirds of the Members as long as (a) such amended Bylaws are consistent with the JPA Agreement and (b) Members shall have the right to withdraw from VEPGA prior to the effective date of such amendment. The Board, at least 30 days prior to the adoption of amended Bylaws, shall make a copy of such proposed amended Bylaws available to Members.

#560876.7

16. Public Hearing, Second Reading and Final Passage of an Ordinance to authorize an encroachment into the public sidewalk right-of-way for a display window at 1102 King Street. (#20 2/12/02) **[ROLL-CALL VOTE]**

The Deputy City Clerk read the docket item.

It was noted that there were no speakers on this item; therefore, the public hearing was concluded.

WHEREUPON, upon motion by Councilman Euille, seconded by Councilwoman Pepper and carried on a ROLL-CALL vote of 6-to-0, City Council finally passed the ordinance upon its Second Reading and Final Passage. The voting was as follows:

Euille	"aye"	Cleveland	absent
Pepper	"aye"	Eberwein	"aye"
Donley	"aye"	Speck	"aye"
	Woodson	"aye"	

The ordinance finally passed reads as follows:

ORDINANCE NO. 4240

AN ORDINANCE authorizing the owner of the property at 1102 King Street to establish and maintain an encroachment for a shop window into the public sidewalk right-of-way at 1102 King Street, in the City of Alexandria, Virginia.

WHEREAS, Michele L. Richardson ("Owner") is the owner of the commercial property located at 1102 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain a shop window which will encroach into the public sidewalk right-of-way at 1102 King Street; and

WHEREAS, the public right-of-way at that point on 1102 King Street; will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way of 1102 King Street, in the City of Alexandria, said encroachment consisting of a shop window, as generally shown on the Encroachment Plan attached hereto, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owner of liability for any negligence on his part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owner maintaining, at all times and at his own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business in the Commonwealth of Virginia and with minimum limits as follows:

Bodily Injury:	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence \$1,000,000 aggregate

This liability insurance policy shall identify the City of Alexandria and Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In that event, Owner shall, upon notice from the city, remove the encroachment from the public right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of Owner. Nothing in this section shall relieve Owner of his obligations and undertakings required under this ordinance.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owner, at his own expense, obtaining, installing and dedicating to the City one Model SD-42 Ironsides series trash container to be installed at the southwest corner of King and Henry Streets.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 5. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owner's maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 6. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any of its officers or employees.

Section 7. That Owner shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in § 3-2-85 of The Code of the City of Alexandria, Virginia, 1981, as amended.

Section 8. That the authorization herein granted to establish and maintain the encroachment shall be terminated whenever the City of Alexandria desires to use the affected public right-of-way for any purpose whatsoever and, by written notification, demands from Owner the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be found, or shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachment caused by the removal.

Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Introduction: February 12, 2002
First Reading: February 12, 2002
Publication: February 14, 2002
Public Hearing: February 23, 2002
Second Reading: February 23, 2002
Final Passage: February 23, 2002

Attachment: Encroachment Plan

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REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

17. **CLERMONT COVE APPEAL** -- Public Hearing on and Consideration of an Appeal from a decision of the Alexandria Planning Commission on February 5, 2002, upholding a decision of the Director of Transportation and Environmental Services denying a request for a waiver of the Resource Protection Area (RPA) buffer requirements for a proposed residential development which would be located at 201 Clermont Avenue. Applicant and Appellant: Clermont Industries, LLC, by Cyril D. Calley, attorney.

COMMISSION ACTION: Denied 7-0

(A copy of a letter dated February 21, 2002, from Cyril D. Calley, attorney for the applicant, withdrawing the appeal, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 17; 2/23/02, and is incorporated herewith as part of this record by reference.

A copy of the City Manager's memorandum dated February 15, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 17; 2/23/02, and is incorporated herewith as part of this record by reference.

A copy of the appeal dated February 2, 2002, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 17; 2/23/02, and is incorporated herewith as part of this record by reference.

A copy of the Planning Commission report is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 4 of Item No. 17; 2/23/02, and is incorporated herewith as part of this record by reference.

Communications received on this item are on file in the office of the City Clerk and Clerk of Council, marked collectively as Exhibit No. 5 of Item No. 17; 2/23/02, and is incorporated herewith as part of this record by reference.)

Without objection, City Council noted the withdrawal.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

DEFERRAL/WITHDRAWAL CONSENT CALENDAR (18-22)

Planning Commission (continued)

18. **SPECIAL USE PERMIT #2001-0135 -- 107 N WEST ST -- MARIO'S GOURMET ALLEY** -- Public Hearing and Consideration of a special use permit review for a wholesale specialty foods business; zoned CD/Commercial Downtown. Applicant: Dobbin Enterprises, Inc., by Nancy Perez.

COMMISSION ACTION: Deferred

19. **SPECIAL USE PERMIT #2001-0133** -- 2601 JEFFERSON DAVIS HY -- POTOMAC YARD RAIL PARK/DOG RUN -- Public Hearing and Consideration of a request for a special use permit to make temporary improvements for a public park dog run area on the southern portion of the Potomac Yard Rail Park site; zoned CDD-10/Coordinated Development District. Applicant: Crescent Resources, LLC, by Duncan W. Blair, attorney.

COMMISSION ACTION: Deferred 6-0

The following items 20, 21, and 22 pertaining to Clermont Cove were "Tabled by the Planning Commission:"

20. **REZONING #2001-0004** -- 201 CLERMONT AV, REAR OF 4601-4607 EISENHOWER AV (Parcel Address of 801 S Van Dorn St) -- CLERMONT COVE -- Public Hearing and Consideration of a request to change the zoning designation of the subject property from UT/Utilities and Transportation to OCM/Office Commercial Medium. Applicant: Clermont Industries, LLC, by Cyril D. Calley, attorney.

21. **DEVELOPMENT SPECIAL USE PERMIT #2001-0013** -- 201 CLERMONT AV, REAR OF 4601-4607 EISENHOWER AV (Parcel Address of 801 S Van Dorn St) CLERMONT COVE -- Public Hearing and Consideration of a request for a development special use permit, with site plan, for construction of residential dwellings; zoned UT/Utilities and Transportation and OCM/Office Commercial Medium (proposed). Applicant: Clermont Industries, LLC, by Cyril D. Calley, attorney.

22. **SPECIAL USE PERMIT #2001-0082** -- 201 CLERMONT AV, REAR OF 4601-4607 EISENHOWER AV (Parcel Address of 801 S Van Dorn St) CLERMONT COVE -- Public Hearing and Consideration of a request for a special use permit for a transportation management plan (TMP) for a proposed residential development; zoned UT/Utilities and Transportation and OCM/Office Commercial Medium (proposed). Applicant: Clermont Industries, LLC, by Cyril D. Calley, attorney.

END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR

City Council noted the deferrals and the items tabled by the Planning Commission.

THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED, upon motion by Councilwoman Pepper, seconded by Councilwoman Woodson and carried unanimously by all those present, at 12:43 p.m., the Public Hearing Meeting of February 23, 2002, was adjourned. The voting was as follows:

Pepper	"aye"	Cleveland	absent
Woodson	"aye"	Eberwein	"aye"
Donley	"aye"	Euille	"aye"
	Speck	"aye"	

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APPROVED BY:

KERRY J. DONLEY

MAYOR

ATTEST:

Susan K. Seagroves, Deputy City Clerk